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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-217543

DATE: June 20, 1985

MATTER OF: Poloron Products of Pa., Inc.

DIGEST:

Where the request for proposals specifically states that multiple awards could be made for any quantity within six ranges of quantities, the Army has flexibility and is not required to make award to mobilization base producers on the basis of the lowest price in any specific quantity range.

Poloron Products of Pa., Inc. (Poloron), protests the awards under request for proposals (RFP) No. DAAA09-84-R-0565 issued by the U.S. Army Armament, Munitions and Chemical Command, Rock Island, Illinois (Army) for 122,321,335 M42/M46/XM77 grenade bodies.

The protest is denied.

The RFP was issued pursuant to 10 U.S.C. § 2304(a) (16), as implemented by the Federal Acquisition Regulation (FAR), § 15.217.48 C.F.R. § 15.217 (1984), which authorized the Army to negotiate a contract when, inter alia, it is necessary to keep vital facilities or suppliers in business or make them available in the event of a national emergency, or to divide current production requirements among two or more contractors in order to provide for an adequate industrial mobilization base.

The RFP was restricted to the seven mobilization base producers of the three types of grenade bodies, including Poloron. Each offeror could submit offers on six quantity ranges (A through F). The RFP provided that multiple awards could be made for any quantity within a range, but that offerors could receive only one award.

The Army awarded four contracts to the lowest offerors in range A (20,400,001-22,800,000) for 88,800,000 grenade bodies, and requested best and final offers for ranges B through F from the remaining offerors, including Poloron, for the remaining 33,521,335 grenade bodies.

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Poloron submitted the lowest price for range B quantities (18,000,001-20,400,000). However, the Army made a determination to keep the seven base producers active, and award to Poloron for range B would not have permitted awards to the three base producers remaining after the initial four awards. The Army, therefore, made no award in range B and Poloron was awarded a contract for 8,400,001 grenade parts on its range F offer.

Poloron's original protest alleged that the contracts were improperly awarded because the RFP did not indicate the Army's intention to award contracts in separate phases. Poloron also contended that the basis of award was changed during the second phase and that the Army did not consider the suppliers' proven production capacity in making the awards.

Since the submission of its original protest, Poloron has crystallized its contentions. Poloron now contends that the Army did not award the contracts in accordance with the evaluation criteria in the RFP and failed to inform offerors of its determination to change the evaluation criteria by awarding contracts to the seven base producers. Poloron also alleges that the Army changed what constituted the government's best interest because, during the first phase, contracts were awarded on the basis of the highest-quantity range and lowest prices, while during the second phase the Army made awards to the remaining three producers, regardless of price, in order to keep all seven base producers in production. The protester contends that the Army is not free to arbitrarily change its determination of what constitutes the best interests of the government particularly after prices are revealed. Poloron claims prejudice by the change because it had priced its best and final offer on the assumption that award during the second phase would be made on the basis of the highest-quantity range and lowest price. Therefore, Poloron states that the Army must award it a contract at the range B quantity range and price because of the alleged change in criteria after best and final offers were received, and because the change provided an opportunity for and created the appearance of impropriety.

The record clearly indicates that there was no change in criteria after best and final offers were received. Under the RFP, award could have been made to all, some or none of the offerors. The procurement was subject to the availability of appropriations, and section H-3 of the RFP advised that no contract award would be made until funds

were available. Additionally, section M-5 of the RFP cautioned offerors that the competitive procurement could result in some offerors not receiving a contract award. That section also advised that the range of quantities and delivery rates are for the purpose of allowing the government to select a combination of multiple awards which would satisfy the current production requirements and retain adequate suppliers in an active state with capability to accelerate production in the future if required. Under sections M-2 and M-5 of the RFP, the government reserved the right to make that combination of awards determined to be in the best interest of the government considering factors such as price, the mobilization base, estimated layaway and start-up costs, contractor capacity, and potential additional requirements. Under section M-5 of the RFP, there was the distinct possibility that all offerors could receive an award.

Since the RFP gave the Army the flexibility to make contract awards in any range or combination of ranges and to consider the mobilization base as well as price, the Army was not required to award contracts on the basis of the highest range and lowest price in both phases of the procurement. Additionally, the Army's determination to make award to all seven producers was in compliance with section M-5 of the RFP and was within the broad discretion it has in providing for an adequate industrial mobilization base. 49 Comp. Gen. 463 (1970). We have previously recognized that where the establishment of several producers or sources of supply is in the interest of national defense, a contract may be negotiated under 10 U.S.C. § 2304(a)(16), supra, and under that authority any additional costs involved may be properly assumed by the government without regard to prices available from other sources. 49 Comp. Gen. 840, 844 (1970). See also Etamco Industries, B-187532, Feb. 25, 1977, 77-1 CPD ¶ 141. Therefore, Poloron's contention that the Army did not award contracts in accordance with the RFP's evaluation criteria is without merit.

While the Army's award of contracts in two phases appears unusual, we find that no prejudice resulted to Poloron because, as noted above, there was always the possibility that award could be made to all seven base producers.

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The protest is denied.

Harry R. Van Cleve
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General Counsel